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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: FEB 12 2008
[SRC 01 137 55672]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned
to the Vermont Service Center. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, withdrew the applicant's Temporary Protected Status (TPS) and simultaneously disapproved his application for re-registration. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a citizen of El Salvador who is seeking TPS under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the applicant's application for re-registration because he found that the applicant had failed to submit requested court documentation relating to his criminal record, and withdrew the applicant's TPS because of the applicant's failure to successfully re-register.

The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1).

The record reveals that the director determined that the applicant had abandoned his re-registration application by failing to submit the requested court records pertaining to his criminal history. The director withdrew the applicant's TPS pursuant to 8 C.F.R. § 244.14(a)(3) because the applicant had failed to successfully re-register. However, the director should have withdrawn TPS pursuant to 8 C.F.R. § 244.14(a)(1) because the applicant, by failing to provide requested court records necessary for the adjudication of his application, had become ineligible for TPS.

On appeal, the applicant states that he is submitting documentation to show that he has been convicted of only one misdemeanor.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f) (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or

- (2) During any subsequent extension of such designation if at the time of the initial registration period:
- (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or
 - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

The regulation at 8 C.F.R. § 244.1 defines “felony” and “misdemeanor:”

Felony means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

Misdemeanor means a crime committed in the United States, either

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term “felony” of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.
8 C.F.R. § 244.1.

The record reveals that the applicant had been arrested and charged with the following misdemeanor offenses:

1. On May 10, 1998, for driving while intoxicated, in violation of Texas Penal Code section 49.04.
2. On October 1, 2002, for assault causing bodily injury on a family member, in violation of Texas Penal Code section 22.01(A)(1).
3. On September 7, 2005, for assault causing bodily injury, in violation of Texas Penal Code section 22.01(A)(1).
4. On September 7, 2005, for resisting arrest, in violation of Texas Penal Code section 38.03(a).
5. On September 7, 2005, for evading arrest, in violation of Texas Penal Code section 38.04(b).
6. On September 7, 2005, for reckless driving, in violation of Texas Transportation Code section 545.401. This offense is a misdemeanor, punishable by 30 days in the county jail, a fine of \$500 or both.

Pursuant to letters dated September 1, 2005, and September 15, 2006, the applicant was requested to submit the final court disposition for each of the charges detailed above. In response, the applicant submitted documentation indicating that the offenses listed in numbers 1 and 2 above had been dismissed. The applicant also submitted documentation indicating that he was convicted of the offense of resisting arrest, item number 4 above, and received a \$500 fine and 30 hours community service. He was also ordered to avoid contact with the complaining witness and to complete an anger management program.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application. Therefore, he denied the applicant's application for re-registration on July 26, 2007, and withdrew his TPS. The director noted that the applicant failed to submit final disposition of the offenses listed in item numbers three, five and six above.

On appeal, the applicant submits copies of certified court documents reflecting that the offenses of assault and reckless driving, items 3 and 6 above, were dismissed by the court on November 29, 2005.

The applicant has failed to provide any evidence revealing the final court disposition of his arrest for evading arrest, listed in item number 5 above. The applicant is therefore ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the director's decision to withdraw the applicant's TPS and to deny the application for re-registration will be affirmed.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.